

REMARKS

Applicant has amended Claims 1, 6, 13 and 19, to more clearly point out the present inventive concept. Applicant is submitting herewith a Request for Continued Examination. Applicant requests that any previously non-entered Amendments not be entered. Attached to this Amendment is a copy of the Order from the United States Court of Appeals for the Federal Circuit dated June 20, 2008, granting Appellant's Unopposed Motion For Remand.

The claims have been amended to clarify one aspect that the Examiner has brought to light in the Examiner's Reply Brief to the Appeal Brief filed by Appellant in the Appeal before the BPAI with respect to the language "extracts" vs. "causes."

One issue that was pointed out in the Appeal Brief to the Federal Circuit was the inconsistencies between the Examiner's claim construction and the Examiner's position on both anticipation and motivation and that of the BPAI. The Examiner took the position that, in *Hudetz*, the corresponding structure to that of the triggering device was the scanner. Thus, the Examiner considered the scanner to correspond to the triggering device and then, to support motivation to combine, utilized the language in *Hudetz* wherein the scanner could be implemented in a wireless fashion and made the connection to the fact that the scanner could be physically separate from the activation system. Applicant argued in the Appeal Brief before the BPAI against this construction. However, the BPAI took the position that the triggering device corresponded to the bar code itself and then agreed with the Examiner's position on motivation, which is clear error. Applicant would appreciate clarification on these two issues to ensure consistency. In the Examiner's comments on the bottom of page 18 and continuing onto page 19, the Examiner indicated that a broad interpretation was being given to the language "extracts" and that it is not consistent with Applicant's arguments. This language has been clarified in the claims and Applicant believes that this may be a point that could push this case forward to allowance. The language that Applicant is referring to in the Reply Brief is as follows:

Appellant argues limitations that are not required by the claims. When the claims are given the broadest reasonable interpretation in light of the Specification, the claims do not require the limitations argued by the Appellant. First, the Appellants argue that the activation system "extracts" the unique code by causing the extraction of unique code from the triggering device. The claims do not require such a limitation. The

claims merely require the step of "extracting ... with an activation system" but does not require that the activation system "cause" the method step to take place. The distinction is that any external signal could be used to initiate the extracting step to begin "extracting the unique code with an activation system," including but not limited to a user input or bar code scanner and pen reader operations. Similarly, Appellants argue that the claimed "activation" system cannot be equated with a personal computer of either Hudetz. Again, the claims merely recite an "activation system" but does not positively recite that it is the activation system that "activates" the "extracting" step. However, assuming arguendo, that the interpretation of the claims do require an "activation system" causing "extraction" as argued by the Appellant, the prior art of record as applied still teaches each and every limitation of the claims.

Applicant believes that the amendments to the claims in addition to the arguments that are set forth both in the Appeal Brief before the BPAI and the Appeal Brief before the Federal Circuit should clarify the situation. Applicant would appreciate an interview of this case in order to insure that a proper claim construction is present such that, in the event that this must again be appealed, the position on claim construction and on application of the art to the claims is clear from both the Examiner's perspective and from the perspective of the Board.

Applicant has now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicant respectfully requests full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-25,356 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
HOWISON & ARNOTT, L.L.P.
Attorneys for Applicant

/Gregory M. Howison Reg. #30646/
Gregory M. Howison
Registration No. 30,646

GMH/mep

P.O. Box 741715
Dallas, Texas 75374-1715
Tel: 972-479-0462
Fax: 972-479-0464
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NOTE: This order is nonprecedential.

REC'D JUN 23 2008

United States Court of Appeals for the Federal Circuit

2008-1224
(Serial No. 09/614,937)

IN RE JEFFRY JOVAN PHILYAW

Appeal from the United States Patent and Trademark Office, Board of
Patent Appeals and Interferences.

ON MOTION

Before MAYER, SCHALL, and LINN, Circuit Judges,

LINN, Circuit Judge.

ORDER

Jeffry Jovan Philyaw moves without opposition to remand this appeal to the United States Patent and Trademark Office.

Philyaw states that the basis of the remand is to allow him to file a Request for Continued Examination pursuant to 37 C.F.R. § 1.114. Section 1.114 may allow an applicant, inter alia, to submit additional information, including an information disclosure statement, an amendment to the written description, claims or drawings, new arguments or new evidence in support of patentability.

Upon consideration thereof,

IT IS ORDERED THAT:

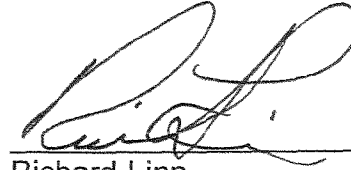
- (1) The motion to remand is granted.
- (2) All other motions are deemed moot.

(3) All sides shall bear their own costs.

FOR THE COURT

JUN 20 2008

Date



Richard Linn
Circuit Judge

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

cc: Gregory M. Howison, Esq.
Stephen Walsh, Esq.

JUN 20 2008

JAN HORBALY
CLERK

s19

JUN 20 2008

ISSUED AS A MANDATE: _____